

**ASSEMBLY BILL**

**No. 432**

**Introduced by Assembly Member Kehoe**

February 14, 2003

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An act to amend Section 1371.37 of the Health and Safety Code, relating to health care service plans.

LEGISLATIVE COUNSEL'S DIGEST

AB 432, as introduced, Kehoe. Health care service plans: unfair payment patterns.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the regulation and licensure of health care service plans by the Department of Managed Health Care and includes provisions pertaining to the payment of provider claims by a health care service plan and to the resolution of claims disputes. Existing law prohibits a health care service plan from engaging in an unfair payment pattern, as defined, in its reimbursement of a provider and authorizes the director to impose sanctions for a violation of this prohibition. The willful violation of the provisions governing health care service plans is a crime.

This bill would include as an unfair payment pattern a health care service plan's failure when acting as a secondary or supplemental plan to provide full reimbursement, as defined, to a health care provider.

Because this bill would specify an additional form of prohibited conduct under the Knox-Keene Health Service Plan Act of 1975, the willful violation of which is a crime, the bill would create a new crime and thus impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1371.37 of the Health and Safety Code  
2 is amended to read:

3 1371.37. (a) A health care service plan is prohibited from  
4 engaging in an unfair payment pattern, as defined in this section.

5 (b) Consistent with subdivision (a) of Section 1371.39, the  
6 director may investigate a health care service plan to determine  
7 whether it has engaged in an unfair payment pattern.

8 (c) An “unfair payment pattern,” as used in this section, means  
9 any of the following:

10 (1) Engaging in a demonstrable and unjust pattern, as defined  
11 by the department, of reviewing or processing complete and  
12 accurate claims that results in payment delays.

13 (2) Engaging in a demonstrable and unjust pattern, as defined  
14 by the department, of reducing the amount of payment or denying  
15 complete and accurate claims.

16 (3) Failing on a repeated basis to pay the uncontested portions  
17 of a claim within the timeframes specified in Section 1371, 1371.1,  
18 or 1371.35.

19 (4) Failing on a repeated basis to automatically include the  
20 interest due on claims pursuant to Section 1371.

21 (5) *Failing to provide full reimbursement to a health care*  
22 *provider when acting as or in the position of a secondary or*  
23 *supplemental health care service plan.*

24 *For purposes of this paragraph, “full reimbursement” includes*  
25 *payment for copayments and deductibles, and means either:*

26 (A) *The difference between the amount paid by the primary*  
27 *health care service plan and the allowed amount under its fee*  
28 *schedule, but not to exceed the secondary or supplemental plan’s*  
29 *fee schedule.*

30 (B) *In the event that the primary plan pays the health care*  
31 *provider on a capitated or prepaid basis, reimbursement to the*

1 *provider of the normal amount allowed under the fee schedule of*  
2 *the secondary or supplemental plan.*

3 (d) (1) Upon a final determination by the director that a health  
4 care service plan has engaged in an unfair payment pattern, the  
5 director may:

6 (A) Impose monetary penalties as permitted under this chapter.

7 (B) Require the health care service plan for a period of three  
8 years from the date of the director's determination, or for a shorter  
9 period prescribed by the director, to pay complete and accurate  
10 claims from the provider within a shorter period of time than that  
11 required by Section 1371. The provisions of this subparagraph  
12 shall not become operative until January 1, 2002.

13 (C) Include a claim for costs incurred by the department in any  
14 administrative or judicial action, including investigative expenses  
15 and the cost to monitor compliance by the plan.

16 (2) For ~~any~~ *an* overpayment made by a health care service plan  
17 while subject to the provisions of paragraph (1), the provider shall  
18 remain liable to the plan for repayment pursuant to Section 1371.1.

19 (e) The enforcement remedies provided in this section are not  
20 exclusive and shall not limit or preclude the use of any otherwise  
21 available criminal, civil, or administrative remedy.

22 (f) The penalties set forth in this section shall not preclude,  
23 suspend, affect, or impact any other duty, right, responsibility, or  
24 obligation under a statute or under a contract between a health care  
25 service plan and a provider.

26 (g) A health care service plan may not delegate any statutory  
27 liability under this section.

28 (h) For the purposes of this section, "complete and accurate  
29 claim" has the same meaning as that provided in the regulations  
30 adopted by the department pursuant to subdivision (a) of Section  
31 1371.38.

32 (i) On or before December 31, 2001, the department shall  
33 report to the Legislature and the Governor information regarding  
34 the development of the definition of "unjust pattern" as used in  
35 this section. This report shall include, but not be limited to, a  
36 description of the process used and a list of the parties involved in  
37 the department's development of this definition, as well as  
38 recommendations for statutory adoption.

39 (j) The department shall make available, upon request and on  
40 its web site, information regarding actions taken pursuant to this

1 section, including a description of the activities that were the basis  
2 for the action.

3 SEC. 2. No reimbursement is required by this act pursuant to  
4 Section 6 of Article XIII B of the California Constitution because  
5 the only costs that may be incurred by a local agency or school  
6 district will be incurred because this act creates a new crime or  
7 infraction, eliminates a crime or infraction, or changes the penalty  
8 for a crime or infraction, within the meaning of Section 17556 of  
9 the Government Code, or changes the definition of a crime within  
10 the meaning of Section 6 of Article XIII B of the California  
11 Constitution.

